

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
WACO DIVISION**

**RICHARD CORDER et al.,
Plaintiffs,**

v.

**BBG COMMUNICATIONS, INC. et al.,
Defendants.**

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CIVIL ACTION NO. W-11-CA-00264

ORDER

Before the Court are the Motions to Dismiss filed by the Defendants, BBG Communications, Inc. and BBG Global, AG. Having considered the motions, the record, and the applicable legal authority, the Court finds that the motions should be denied as moot.

On October 12, 2011, the Plaintiffs, Richard and Dharma Corder, sued the Defendants, alleging that they had violated Texas law by failing to disclose the rates for a telephone call placed at an airport in Leipzig, Germany. Three months later, the Defendants moved to dismiss the complaint for lack of subject-matter jurisdiction, lack of personal jurisdiction, improper venue, and failure to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(1)–(3), (6). The Corders then amended their complaint.


“An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to or incorporates by reference the earlier pleading.” *Boelens v. Redman Homes, Inc.*, 759 F.2d 504,

508 (5th Cir. 1985); see also *Pac. Bell Tel. Co. v. Linkline Commc'ns, Inc.*, 555 U.S. 438, 456 n.4 (2009) ("Normally, an amended complaint supersedes the original complaint."). "If an amended complaint does not incorporate the earlier pleading, the court may deny as moot a motion to dismiss that was filed before the operative amended complaint." *Probado Techs. Corp. v. Smartnet, Inc.*, Civil Action No. C-09-349, 2010 WL 918573, at *1 (S.D. Tex. Mar. 12, 2010).

In this case, the Corders' First Amended Complaint does not refer to or incorporate by reference their Original Complaint, and, thus, it is the operative pleading. The Defendants filed their motions before the First Amended Complaint, and they only addresses the allegations contained in the now-obsolete Original Complaint. Accordingly, it is

ORDERED that "Defendant BBG Communications, Inc.'s Motion to Dismiss for Lack of Subject-Matter Jurisdiction, Lack of Personal Jurisdiction, Improper Venue, and Failure to State a Claim" (ECF No. 38) and "Defendant BBG Global, AG's Motion to Dismiss for Lack of Personal Jurisdiction, Improper Venue, and Failure to State a Claim" (ECF No. 39) are **DENIED AS MOOT**.

SIGNED this 5 day of July, 2012.



WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE